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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 316

SWIFT & COMPANY,

Petitioner,

vs.

RECONSTRUCTION FINANCE CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Edward R. Johnston,
Albert E. Jenner, Jr.,
Edward H. Hatton,
Attorneys for Petitioner.

Edgar Byron Kixmiller,
William N. Strack,
Poppenhusen, Johnston, Thompson & Raymond,
Of Counsel.

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No.

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RECONSTRUCTION FINANCE CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Swift & Company, petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled cause on June 21, 1950, reversing the judgment of the District Court for the Northern District of Illinois.

Opinions Below.

The opinions of the District Court (R. 60-73; 719-728) are reported at 79 F. Supp. 546, and 81 F. Supp. 629. The majority opinion of the Court of Appeals, and the dissenting opinion of one judge, are not yet reported but may be found in the record (R. 752-759).

Jurisdiction.

The judgment of the Court of Appeals for the Seventh Circuit was entered on June 21, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

Questions Presented.

1. Whether a subsidy paid to slaughterers of livestock under controlling directives of the Office of Economic Stabilization and respondent's "Livestock Slaughter Payments Regulation", which was paid to slaughterers "on account of the slaughter of livestock", which was measured in dollar amount by the live weight of the livestock slaughtered, and the payment benefits of which were specifically required to be passed back by the slaughterer to the livestock producer, was one "relating to the production or sale of agricultural commodities" [*i.e.*, livestock] as provided by Section 2(m) of the Price Control Act, so as to confer jurisdiction on the District Court pursuant to the terms of that Section.

2. Whether the decision of the Court of Appeals has the practical effect of substantially reading Section 2(m) out of the Price Control Act.

3. Whether "Announcement No. 1 under Regulation No. 10," which was issued by respondent under Section 7003.11 of Regulation No. 10 authorizing the issuance of interpretations or statements of agency policy, which was not in the form or terms of a regulation, which was not an amendment to any existing regulation, and which was never published in nor filed with the Federal Register contrary to respondent's usual practice and contrary to the publication requirements of Section 3 of the Administrative Procedure Act, was a "regulation or order" issued under Section 2 of the Price Control Act,

and thus reviewable exclusively by the Emergency Court of Appeals under Section 204(d) of that Act, or whether it was an agency interpretation or announcement of agency policy, the validity of which was a matter within the jurisdiction of the District Court under 28 U. S. C. 1331, and the Federal Declaratory Judgment Act.

4. Whether judicial consideration by federal district courts of agency action imposing a condition on the payment of livestock slaughter subsidies unauthorized by applicable directives and regulations may be foreclosed and frustrated by characterizing such action as *in effect* a "regulation or order" so as to bring the agency action by that device within the exclusive jurisdiction of the Emergency Court of Appeals.

5. Whether the afterthought retroactive subsidy payments forfeiture and recapture program upon which respondent embarked on March 31, 1947, approximately six months after the termination of price controls and the livestock slaughter subsidy program, came within Section 2(m) of the Price Control Act by imposing upon the payment of the subsidies in question "conditions or penalties not authorized by the provisions of the Act or * * * regulations" authorizing such subsidies.

6. Whether respondent's subsidy payments forfeiture and recapture program retroactively impaired petitioner's accrued vested rights to livestock slaughter subsidies in contravention of the Fifth Amendment to the Constitution of the United States.

Statute, Directive, Regulation, and Announcement Involved.

The pertinent provisions of the Emergency Price Control Act of 1942 as amended (50 U. S. C. App. 901 *et seq.*), of the applicable directive, regulation, and Announcement No. 1 are set forth in the appendix to this Petition, infra, pp. i to xii.

STATEMENT.

The Nature of the Case.

This is a civil action brought by petitioner pursuant to Section 2(m) of the Price Control Act as amended for declaratory judgment and other appropriate relief (R. 2-5). The ultimate question presented is the right of petitioner to recover unpaid livestock slaughter subsidies (and to retain subsidy payments paid to it by RFC prior to the commencement of suit) with respect to inventory on hand upon termination of price control at 12:01 A.M., October 15, 1946, resulting from animals slaughtered in reliance upon and pursuant to the livestock slaughter subsidy program in effect under the Price Control Act and appropriate directives and regulations during the period September 1, 1946 to October 15, 1946. Slaughtering by petitioner and other slaughterers continued as contemplated by the Act and the regulations up to the time of decontrol. Necessarily, a portion of the carcasses and meat products derived from the slaughtering operations carried on during the period of price control, was on hand when decontrol went into effect. Slaughter subsidy claims were filed in due course as provided in the regulations in effect at the time of decontrol. The claims were paid in substantial part in installments throughout the balance of the year 1946.

Several months after the last installment payment was made on subsidy claims covering slaughtering during the September-October period, and commencing with an informal announcement labeled "Announcement No. 1" issued March 31, 1947, without any action on the part of Congress in that regard, and although the statutes and regulations under which the livestock subsidy program had been carried on and the slaughtering operations conducted had long since terminated and expired, respondent undertook to effect a retroactive forfeiture of livestock slaughter subsidy claims remaining unpaid, and a forfeiture and recapture of payments already made with respect to slaughter operations as to which inventory was still on hand at the time of decontrol on October 15, 1946.

Petitioner commenced this action upon receipt from RFC on April 29, 1947 of a written demand that it file a report with RFC by July 31, 1947 reflecting the amount of livestock slaughter subsidy payments theretofore received by it which RFC sought to invalidate and recapture by Announcement No. 1. The demand recited that any slaughterer who failed to file the report and surrender and forego subsidy payments on the inventory in question would suffer the penalty of a forfeiture of *all* livestock slaughter claims for slaughtering had over the *entire* September-October 1946 period when the subsidy program was in effect under the Extension Act of 1946. The demand also threatened action on the part of the Department of Justice.

Petitioner invoked the jurisdiction of the District Court pursuant to Section 2(m) of the Price Control Act which provides that no agency or department of the Government in the payment of sums authorized by the Price

Control Act or other acts of Congress relating to production or sale of agricultural commodities "shall impose any conditions or penalties not authorized by the provisions of the Act or Acts or lawful regulations issued thereunder, under which such sums are authorized * * *." The section then provides that any person aggrieved by "any action" or failure to act of "any" Government agency contrary to the provisions of Section 2(m) "may petition the district court of the district in which he resides or has his place of business for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions of" Section 2(m), or "is otherwise lawful," and giving the Court jurisdiction "to grant appropriate relief."

The complaint prayed for a declaratory judgment finding and declaring the action of RFC to be not in conformity with the Price Control Act, the controlling directives, and respondent's Regulation No. 10; that RFC be restrained from further enforcing its program of forfeiture, penalty and coercion; and that respondent be ordered to pay petitioner the $221,861.51 balance of livestock slaughter subsidy claims due it.

Respondent (R. 44-45) admitted the factual allegations of the complaint, denied that its Announcement No. 1 was invalid, and affirmatively averred that "Announcement No. 1 under Regulation No. 10" was itself a "regulation" and that therefore the trial court was without jurisdiction because of Section 204(d) of the Price Control Act providing that the "Emergency Court of Appeals shall have jurisdiction to determine the validity of any regulation or order issued under Section 2 * * *," and withdrawing power from all other courts to consider the validity of any such regulation.

The Livestock Slaughter Subsidy Program.

A brief consideration of the livestock slaughter subsidy program is required, since the operation of the livestock slaughter subsidy program and its purpose and intent are determinative of the applicability of Section 2(m), as well as the question of whether Announcement No. 1 was in fact a regulation or order.

The program was based on Section 2(e) of the Price Control Act (50 U. S. C. App. 902(e)) which provided for and authorized the payment of *production* subsidies in the following language:

> "Whenever the Administrator determines that the maximum necessary production is not being obtained or may not be obtained during the ensuing year he may * * * make subsidy payments to domestic producers of such commodity in such manner and upon such terms and conditions as he determines to be necessary to obtain the necessary production thereof."

The Livestock Slaughter Payments Regulations.

The livestock slaughter subsidy program was initiated on June 7, 1943 by Regulation No. 3 of Defense Supplies Corporation (8 F. R. 10826), in response to the so-called hold-the-line order of the President (E. O. 9328, 8 F. R. 4681), which resulted in a reduction by 10% of ceiling prices on meats derived from livestock at both the retail and wholesale levels.[1] It was specifically determined by the Director of Economic Stabilization that

[1] Amd't No. 15, R.M.P.R. 169, 8 F.R. 7675; Amd't. No. 5, R.M.P.R. 148, 8 F.R. 7671; Amd't. No. 4, R.M.P.R. 239, 8 F.R. 7679.

the effect of the roll-back should not result in lower prices for livestock sold by the producer to slaughterers.[2] Accordingly, Defense Supplies Corporation was authorized to pay to livestock slaughterers a subsidy approximating the 10% roll-back, so that the slaughterer in turn would be able to pass back the payment benefits to the producers by thus being enabled to continue to pay the same prices for live cattle.

To supplement the admittedly inadequate controls over the prices at which the producer sold livestock to the slaughterer, and in particular to implement enforcement of the requirement that the payment benefits of the livestock slaughterer subsidy be passed back to the producer, the Director of Economic Stabilization issued a new and comprehensive overall directive on October 25, 1943. (8 F.R. 14641; App., this Pet., pp. ii to x infra.) This directive is the keystone of the livestock stabilization program, and is the basic directive insofar as the case at bar is concerned.

The directive of October 25, 1943 established a maximum-minimum range of prices governing the sales of livestock by the producer to the slaughterer.

If livestock purchases were made above or below the range of prices thus established, then deductions were made from subsidy payments. The directive contained no provisions respecting or affecting price ceilings on meat or other commodities processed from the purchased livestock. The directive recited that it was designed to insure "(a) That the livestock slaughter payments made with respect to cattle under Regulation 3 of Defense Supplies Corporation * * * *inure to the benefit of cattle*

[2] See Statement of Director of Economic Stabilization, this Petition, pp. 9 to 10 infra.

producers''; "(b) That such payments are made only to the extent necessary to maintain *live cattle* prices within a range consistent with the purposes of the stabilization and production programs''; "(c) To insure the maximum *production* of cattle''; and (d) to make certain "That available supplies of *live* cattle are equitably distributed among slaughterers and feeders.'' 8 F.R. 14641.)[3]

The statement of consideration issued in connection with the October 25, 1943 directive (Office of War Information Release 2652) contained the following apt description of the subsidy program:

> "Since May, 1942, beef prices have been subject to control at wholesale and retail. On December 16, 1942, uniform dollars-and-cents prices were established by zones throughout the country for beef carcasses and wholesale cuts. Based upon these regionally uniform wholesale prices, uniform dollars-and-cents retail prices were established in May, 1943. As part of the Government's program for reducing the cost of living to the general level of September 15, 1942, the wholesale and retail prices of beef were reduced by approximately 10 per cent in June of 1943. In order that this reduction might not threaten the production of live stock by unduly reducing the return to the producer, the price reduction was accompanied by the institution of an equalized payment to slaughterers, enabling them to continue to pay the same prices for live cattle.''
>
> * * *
>
> "The Director has considered the possibility of establishing both price ceilings and support prices for live cattle. The present directive, while avoiding

[3] Subsequent directives (amendments and extensions) extended the program to other livestock, namely, sheep, lambs, hogs, pigs and calves.

the disadvantages of a formal price regulation or support price program, seeks to accomplish the purpose of both. This it does by requiring deductions from subsidy payments in the case of any slaughterer whose monthly payments for live cattle are either above or below the range of prices provided for in the directive."

This was the basic directive pursuant to which and in conformity with which the program of livestock subsidies was formulated. Its fundamental purpose and effect were never changed and were implemented and fortified by subsequent directives.[4]

Defense Supplies Corporation amended its Regulation No. 3 to effectuate the Directive of October 25, 1943 (9 F. R. 1820; 9 F.R. 1821). The amended regulation specifically required that the subsidy benefits be passed on and inure to the livestock producer. Section 7003.10(b) of the regulation provided for invalidation of any subsidy "claim of any applicant who fails to pass on to persons from whom he purchases livestock the benefits secured from payments under this regulation." In addi-

[4] See e.g., Directive 28 (10 F.R. 522, January 10, 1945), establishing overriding ceiling prices on sales of live cattle; Directive 31 (10 F.R. 1336, January 30, 1945), strengthening controls over slaughtering of non-federally inspected plants; Directive 38 (10 F.R. 3132, March 21, 1945), providing for payment of extra-compensation subsidies on livestock slaughter; Directive 41 (10 F.R. 4494, April 23, 1945), which became the operating directive for the livestock stabilization program; Directive 48 (10 F.R. 5858, May 21, 1945), amendatory of directive 41, and changed rates of payment on slaughter of cattle, calves, sheep, lambs, hogs, and pigs; Directive 56 (10 F.R. 7117, June 9, 1945), related to eligibility of slaughterers to receive subsidies; Directive 70 (10 F.R. 9478), authorized the discontinuance of subsidies on sheep and lambs slaughtered on and after August 5, 1945; Directive 90 (10 F.R. 14743, December 4, 1945), provided a special subsidy for slaughter of livestock.

tion, Revised Regulation No. 3, by way of implementing the overriding directives adverted to above, provided that the amount of the subsidies was to be calculated on the live weight of the livestock slaughtered and that the subsidies were to become due and owing at the time of slaughtering the livestock.

Suspension of Price Control on June 30, 1946.

The subsidy program continued until June 30, 1946, when the Emergency Price Control Act of 1942, as amended, expired by its own terms, by reason of the Presidential veto of a bill to extend that Act. The entire price control program, including the livestock slaughter subsidy program, terminated on that date. Respondent honored all subsidy claims for all livestock slaughtered up to June 30, 1946, despite the fact that the meats processed therefrom were sold during the period July 1, 1946-September 1, 1946 at uncontrolled prices. Instead of instituting a recapture program such as the one formulated in Announcement No. 1, respondent affirmatively recognized petitioner's right to a subsidy on all livestock slaughtered up to June 30, 1946, without regard as to whether the meats processed therefrom were sold at uncontrolled prices. Respondent specifically "announced" as follows:

> "Statutory authority under which livestock slaughter payments are made by R.F.C. expires June 30, 1946. No payments will be made by R.F.C. on slaughter after June 30, 1946, unless new legislation is effective in the interim."

Restoration of the Subsidy Program upon Enactment of the Price Control Extension Act of July 25, 1946.

On July 25, 1946, the Price Control Extension Act became law. The Price Decontrol Board established by that

Act authorized the recreation of the entire livestock stabilization program on August 20, 1946. (11 F.R. 9138.) The Director of Economic Stabilization issued his Directive No. 130 on August 23, 1946 (11 F.R. 9375), reissuing and reestablishing the basic directives on a finding that such reissuance "is necessary to insure the maximum necessary production and distribution *of livestock and its products,* * * *." Respondent issued its Livestock Slaughter Payments Regulation No. 10 (R. 6) on August 28, 1946, effective as of September 1, 1946, which incorporated the provisions of Revised Regulation No. 3 (R. 7-25) by reference. Respondent began the payment of livestock subsidies on the slaughter of all livestock occurring on and after September 1, 1946.

Decontrol October 15, 1946.

Effective October 15, 1946, without prior notice to petitioner, price and related controls were removed from practically all commodities then under control, including the termination of the livestock slaughter subsidy program and the removal of all price controls on the sale of livestock and products processed therefrom.

Petitioner submitted its claims for livestock slaughtered by it during the period September 1, 1946-October 14, 1946. Respondent paid all of such claims on October 26, December 22 and December 23, except for a balance of $221,861.51. The claims thus honored, in part covered slaughter operations which resulted in inventory on hand at the close of business October 14, 1946, which fact was known to R.F.C. (R. 734.) On January 3, 1947, respondent issued a public statement that Regulation No. 10 had expired October 15, 1946 .(12 F. R. 66.)

On March 31, 1947, five and one-half months after the termination of the livestock slaughter subsidy program

on October 15, 1946, and three months after respondent's declaration that Regulation No. 10 had expired October 15, 1946, respondent, abruptly and without prior warning or intimation, issued its "Announcement No. 1 under Regulation No. 10." (R. 32-33.) By this "Announcement" respondent sought to effect a disallowance of unpaid subsidy claims and a recovery of subsidy payments theretofore made on slaughter operations as to which meat inventory remained on hand on October 15, 1946.

Under date of April 29, 1947, respondent issued an implementing letter directed to subsidy claimants. (R. 34.) The forms prescribed by respondent required the use of an artificial and arbitrary formula prescribed by RFC to attempt to reconstruct what the slaughterer's meat inventory might have been on October 15, 1946. (R. 35-40.) On the basis of the supposed meat inventory thus calculated, an additional arbitrary formula was required to be applied to reconstruct the live weight livestock equivalent thereof, and from that, the subsidy payments to be recaptu.ed. The announcement provided that if a slaughterer failed or refused to file the form, respondent would impose a "penalty" of requiring a forfeiture of the slaughterer's entire subsidy claims for September and October, 1946. In that connection, this letter also stated that "you may elect to forfeit that claim and no further penalty will apply."

Plaintiff instituted this proceeding in the District Court shortly after receipt of the letter of April 29, 1947.

The Decision of the District Court.

The District Court found the issues of fact and law in favor of petitioner (R. 728-735). It filed two opinions in support of its findings and conclusions. (R. 60-73, 79 F. Supp. 546; R. 719-728, 81 F. Supp. 629.)

The Court rejected respondent's basic argument that the subsidy was a "meat subsidy" rather than a subsidy "relating to the production or sale of an agricultural commodity." The Court emphasized that the controlling directives and regulations required that the benefits of the subsidy inure to the livestock producer; and that the "slaughterer was merely the medium through which the benefit of the subsidy reached the producer, the entire program being designed in order not to depress the ceiling prices of the *producer*, and so as to maintain his production incentive." (R. 67.) The Court pointed out that (R. 67):

> "The subsidy was to be paid not to the consumer, not to the retailer, not to the wholesaler, not on meat inventories of the slaughterers, but was to be paid to the slaughterer for the killing of the live animal, and from which payment the producer had already secured the benefit at the time the slaughterer purchased the livestock from him. The directive provided that the slaughterer was to be reimbursed when he slaughtered the livestock for which he had passed on to the producer the subsidy benefits, as required by Section 7003.10(b). What the producer received was as much a livestock subsidy as if the Government itself had made the payment directly to the producer."

The District Court rejected respondent's contention that there should be read into the Directives and the Livestock Slaughter Payments Regulations a so-called "inherent" but unexpressed condition that the "subsidies would be paid only upon such meat and meat products as were sold by slaughterers at controlled prices." That Court emphasized the consistent administrative treatment of respondent to the contrary, and held the subsidy to be a livestock producer's subsidy rather than a meat subsidy.

The District Court accordingly held that respondent was attempting to impose "conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder" [*i.e.*, the controlling directives and respondent's Regulations Nos. 3 and 10]; and that the subsidy involved was one "relating to the production or sale of agricultural commodities." The Court accordingly found that it had jurisdiction under Section 2(m), and that respondent's "Announcement No. 1" and implementing letter of April 29, 1947 were conditions or penalties not authorized by the basic acts or lawful regulations issued thereunder. The Court also found that the Announcement and the letter were not regulations or orders within the meaning of Section 204(d), and that it accordingly had jurisdiction under the general grant of power contained in 28 U.S.C. 1331.

The Opinion of the Court of Appeals.

The Court of Appeals for the Seventh Circuit, with one Judge dissenting, held that the District Court was without jurisdiction.

Unlike the District Court, the majority opinion did not analyze or set forth the history, mechanics or purpose of the livestock slaughter subsidy program and the applicable directives.

Furthermore, the majority opinion confused petitioner's contentions with respondent's. The majority erroneously stated petitioner's contention to be whether a "meat subsidy" fell within Section 2(m), in the face of petitioner's consistent position to the contrary, that the livestock slaughter subsidy was for the benefit of the livestock producer and was not a "meat subsidy." The Court said (R. 754):

> "It will be observed that Section 2(m) * * * is confined to 'the payment of sums * * * relating to

REASONS FOR GRANTING THE WRIT.

I.

The Court Of Appeals Decided Federal Questions Of General Importance Which Have Not Been But Should Be Reviewed By This Court.

The majority of the Court of Appeals in holding (1) that Section 2(m) of the Price Control Act was inapplicable to the subsidy here involved, and (2) that respondent's "Announcement No. 1" was *in effect* a "regulation" issued under Section 2 of the Price Control Act, determined federal questions of general importance which merit review by this Court.

The General Importance Of The Decision To The Packing Industry.

The packing industry, which is one of the largest and most vital industries in the country, has a direct and substantial interest in the eventual outcome of this litigation. There were at least 4,000 commercial slaughterers in the industry in 1946.[5] The recapture and subsidy invalidation program of respondent found to be unlawful by the District Court in the case at bar thus relates not only to this petitioner, but to each of these 4,000 commercial slaughterers which had meat inventory on hand at the termination of the livestock slaughter subsidy program effective October 15, 1946, and were not excepted from

[5] Statement of George M. Lewis, Director, Dep't of Marketing, American Meat Institute, before Senate Committee on Agriculture and Forestry, 79th Cong. 2nd Sess. (1946).

Announcement No. 1.[6] Although the amount of subsidy sought to be recaptured is not capable of accurate computation for either petitioner or the industry as a whole, it is very substantial.[7]

The General Importance Of The Decision With Respect To Pending Cases.

The decision of the Court of Appeals is also of general importance in the light of cases pending in the federal district courts which involve the same issues presented by the case at bar both with respect to the merits of the case and to petitioner's claim of jurisdiction under Section 2(m).[8] In addition, cases involving the application and interpretation of Section 2(m) as applied to aspects of the livestock slaughter subsidy program other than the legality of Announcement No. 1 also are currently pending in various courts.[9]

The Wide Variance Of Opinion As To The Proper Interpretation Of Section 2(m).

The wide diversity and conflict of opinion expressed in the decided cases as to the proper application of Section

[6] The only exception contained in Announcement No. 1 related to packers whose slaughter of livestock for the combined months of May, June, and September, 1946 totalled 500,000 pounds of livestock or less.

[7] For example, petitioner's claims for livestock production subsidies for the period September 1, 1946-October 14, 1946 aggregated $1,526,429.02.

[8] **Armour & Co. v. R.F.C.**, No. 47 C 960 (N.D. Ills.); **Cudahy Packing Co. v. R.F.C.**, No. 47 C 1039 (N.D. Ills.); **Safeway Stores v. R.F.C.**, No 28462-G (N.D. Cal.); **Purity Stores, Ltd., v. R.F.C.**, No. 29246-E (N.D. Cal.).

[9] **Riverview Packing Co. v. R.F.C.**, No. 9775 (D.N.J.); **Vetch v. R.F.C.**, No. 407 (E.D. Wash.); **Ullacia v. R.F.C.**, No. 2265 (W.D. Wash.); **Miller v. R.F.C.**, No. 2266 (W.D. Wash.); **Hall v. R.F.C.**, No. 2267 (W.D. Wash.); **McKillip v. R.F.C.**, No. 5277 (D. Ore.)

2(m) to the livestock slaughter subsidy directives and regulations emphasize the general importance of review by this Court of the decision in the case at bar.

The decision of the Court of Appeals is the first to our knowledge to hold Section 2(m) inapplicable where a subsidy claimant contends that respondent has imposed a condition on the payment of livestock slaughter subsidy claims not authorized by the livestock slaughter directives and regulations, and is directly contrary to decisions of district courts in other circuits, including one decision which was handed down after the decision in the case at bar. See e. g., *Riverview Packing Co.* v. *R. F. C.*, No. 9775 (D. N. J., July 28, 1950), opinion, Appendix, this Pet. pp. vii to xii; *Katz* v. *R. F. C.*, (W. D. Cal., 1945), appeal dismissed, 156 F. 2d 215 (C. A. 9, 1946).

Furthermore, in cases in which the attack was directed against respondent's regulation or the overriding directives, courts have given full effect to both Section 2(m) and Section 2(d) by indicating that Section 2(m) would have applied had the applicant (as did petitioner in the instant case) sought recovery on the ground that R. F. C. had denied a claim for a reason not authorized by its basic regulations and the controlling directives.[10]

The suggestion has also been made that Section 2(m) goes so far as to confer jurisdiction on the district courts over challenges to the validity of respondent's livestock slaughter regulations themselves.[11]

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[10] **Illinois Packing Co. v. Defense Supplies Corp.**, 57 F. Supp. 8, 11-12 (N.D. Ill., 1944), affd., 156 F. 2d 875 (C.A. 7, 1946); **Illinois Packing Co. v. Bowles**, 147 F. 2d 554, 559-560 (E.C.A., 1945); **Samett v. R.F.C.**, 165 F. 2d 605, 607 (C.A. 10, 1948); **Bowles v. Crew**, 59 F. Supp. 809, 811 (S.D. Cal., 1945).

[11] Dissenting Opinion, **Samett v. R.F.C.**, 165 F 2d 605, 607-608 (C.A. 10, 1948).

At the other extreme, there are dicta in actions challenging respondent's Livestock Slaughter Payments Regulation No. 3, that whether the attack was directed at the basic regulation itself, or merely agency action under it, Section 2(m) would be unavailable on the ground that the livestock slaughter subsidy was not a subsidy "relating to the production or sale of agricultural commodities" but was a "meat subsidy."[12]

The General Importance Of The Decision That Agency Announcements Or Interpretations Are "In Effect" Regulations Or Orders.

The question is presented whether the Court expanded Section 204(d) to include agency action found to be "in effect" a "regulation or order", thereby giving an intent and purpose to Section 204(d) never contemplated by Congress when it enacted that Section as a part of the Price Control Act of 1942.

The decision of the Court of Appeals that Announcement No. 1 was "in effect" a "regulation or order" and that, apart from Section 2(m), the district courts had been deprived of jurisdiction by reason of Section 204(d) of the Price Control Act, forecloses judicial review by the district courts of any interpretation, announcement of agency policy, or action of respondent purporting to be under supposed authority of the controlling directives and its livestock slaughter subsidy regulations.

This matter has immediate and significant consequences apart from the livestock slaughter subsidy program, or the Price Control Act. For example, The Defense Pro-

[12] **Atlantic Meat Co. v. R.F.C., 166 F. 2d 51 (C.A. 1, 1948); Tambasco v. R.F.C., 178 F. 2d 283 (C.A. 2, 1949).**

duction Act of 1950,[13] continues the jurisdiction of the Emergency Court of Appeals and vests it with exclusive jurisdiction over challenges directed against "regulations or orders" issued under the Act, and withdraws jurisdiction from all other courts to consider such challenges. These jurisdictional provisions follow the precise language of Section 204(d) of the Price Control Act.[14]

II.

In Determining That The District Court Did Not Have Jurisdiction Under Section 2(m) Of The Price Control Act, The Court Erroneously Decided A Federal Question Of General Importance Which Has Not Been But Should Be Reviewed By This Court.

The majority of the Court of Appeals, unlike the Judge of the District Court, made no mention in its opinion of the history, purpose, intent, and mechanics of the livestock slaughter subsidy program. Rather, the Court predicated its entire decision on the wholly erroneous assumption that petitioner contended that the livestock slaughter subsidy was one on meats processed from livestock—*i. e.*, a

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[13] Pub. L. No. 774, 81st Cong., 2nd Sess. (1950).

[14] Section 408(d) of the Defense Production Act reads in part as follows:

> "The Emergency Court of Appeals and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under this title, and of any provision of any such regulation or order. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, or order, or to stay, restrain, enjoin or set aside, in whole or in part, any provision of this title authorizing the issuance of such regulation or order, or any provision of any such regulation or order, or to restrain or enjoin the enforcement of any such provision."

consumer's subsidy. This contention was respondent's. Petitioner's contention was directly the opposite—that the livestock slaughter payments were for the benefit of the livestock producer.

1. The history, mechanics, and declared purposes of the livestock slaughter subsidy program were considered at length by the District Court and have been heretofore summarized. (Statement, pp. 7 to 11 *supra*.) The conclusion that the subsidy was for the benefit of the livestock producer seems inescapable. The slaughterer was paid the subsidy computed on the live weight of the cattle slaughtered, to compensate him for the higher prices which he had already paid to the producer. Respondent's livestock slaughter payments regulations expressly declared that slaughterers' claims would be invalidated for failure to pass back benefits of the subsidy to the livestock producers (Section 7003.10(b)). This provision merely recognized and gave effect to the purpose and intent of the livestock slaughter subsidy program. The benefits received by the livestock producer were as much a livestock subsidy as if the Government itself had made the payment directly to the producer. The livestock slaughter subsidy here involved was clearly a subsidy "relating to the production or sale of agricultural commodities," within the meaning of Section 2(m).

2. The Court of Appeals also failed to give effect to the considered use by Congress of the crucial phrase of Section 2(m), "relating to the production or sale of agricultural commodities." Whatever else may be said of the subsidy here involved, it is certainly one "relating" to the "production or sale" of livestock. The subsidy "relates" to "production" of livestock because it was designed to encourage the production of livestock, and because it was intended and was in fact for the benefit of

producers of livestock. It "relates" to the "sale" of livestock because the producer was required to sell, and the slaughterer was required to buy livestock, at the price ceilings and within the price ranges provided in the subsidy directives and regulations; because the producer received the benefit of the subsidy through and by means of the livestock sale and purchase transaction; because it was designed to afford price support to the livestock producer; and because it was designed to induce the livestock producer to sell and the slaughterer to buy livestock in normal and legitimate channels.

3. The practical effect of the decision of the Court of Appeals is substantially to read Section 2(m) out of the statute. Yet Congress, in enacting Section 2(m) in 1944 as an amendment to the Price Control Act, intended that it should be given full effect, and that it should apply to subsidy paying agencies, including respondent.[15] However, as construed by the Court of Appeals, Section 2(m) has no conceivable applicability or effect. Clearly such a totally erroneous construction should not be permitted to stand.

4. The opinion of the Court of Appeals in the case at bar is, to our knowledge, the first decision holding Section 2(m) inapplicable in an action in which a livestock slaughter subsidy claimant relies on (rather than attacks) respondent's basic regulation and the controlling directives, and contends that respondent's actual or threatened invalidation of subsidy claims is not authorized by or permitted by the basic regulations and Acts. All other decisions squarely on this point have held that jurisdiction was conferred by Section 2(m) in this class of cases. *Riverview Packing Co. et al.* v. *R.F.C.*, No. 9775 (D.N.J., 1950) (opin-

[15]See e.g., statements of Senator Taft (90 Cong. Rec. 5929, 5295); Senator Wagner (90 Cong. Rec. 6449-6452).

ion found in this Petition, (App. pp. vii to xii *infra*); *Katz* v. *R.F.C.*, (W.D. Cal., 1945), *appeal dism.*, 156 F. 2d 215 (C.A. 9, 1946). Opinions of other courts have given full and required effect to Section 2(m) and Section 204(d), by agreeing that Section 2(m) is applicable if the attack by the livestock slaughter subsidy claimant is not directly upon the basic regulations, but rather at action by R.F.C. alleged to be unauthorized by the basic Acts or lawful regulations issued thereunder. *Illinois Packing Co.* v. *Defense Supplies Corp.*, 57 F. Supp. 8, 11-12 (N.D. Ill., 1944), aff'd., 156 F. 2d 875 (C.A. 7, 1946); *Illinois Packing Co.* v. *Bowles*, 147 F. 2d 554, 559-560 (E.C.A., 1945); *Samett* v. *R.F.C.*, 165 F. 2d 605, 607 (C.A. 10, 1948); *Bowles* v. *Crew*, 59 F. Sup. 809, 811 (S.D. Cal., 1945).

5. The three authorities relied on by the Court of Appeals do not support its decision. *Atlantic Meat Co.* v. *R.F.C.*, 166 F. 2d 51 (C.A. 1, 1948); and *Tambasco* v. *R.F.C.*, 178 F. 2d 283 (C.A. 2, 1949), each concerned a direct attack on the validity of respondent's Regulation No. 3. Indeed the Court in the *Tambasco* case stated that Section 2 (m) "had application in cases where the plaintiff felt aggrieved at administrative action taken under the terms of the Act or under a valid regulation." Insofar as the opinions in these cases contain dicta that the livestock slaughter subsidy is not one "relating" to the "production" or "sale" of livestock, they are in conflict with better reasoned authority and fail to give effect either to the purpose, intent, and operation of the livestock slaughter subsidy program, or Congress' advised used in Section 2 (m) of the words "*relating*" and "*production* or *sale*" in the statutory phrase.

Superior Packing Co. v. *Clark*, 164 F. 2d 343 (E.C.A., 1947), did not involve any phase of the subsidy program, did not in any way or manner consider Section 2 (m), but was an action directly attacking the validity of ceiling

prices established by RMPR 169 (meat carcasses and wholesale cuts). The Court held that meats were a commodity processed from an agricultural commodity, and that approval of R.M.P.R. 169 by the Secretary of Agriculture was therefore not required.

III.

In Determining That Respondent's "Announcement No. 1 Under Regulation No. 10" And The Implementing Letter Of April 29, 1947 Were In Effect "Regulations Or Orders," The Court Erroneously Decided A Federal Question Of General Importance Which Has Not Been But Should Be Reviewed By This Court.

The Court of Appeals also determined that the Announcement and implementing letter were "in effect" regulations or orders issued under Section 2 of the Price Control Act, and concluded that the District Court had erred in holding that it had jurisdiction under 28 U.S.C. 1331 and the Federal Declaratory Judgment Act because of Section 204 (d) of the Price Control Act.

1. Congress, in Section 204(d), gave the Emergency Court of Appeals exclusive jurisdiction to review the validity of "regulations" or "orders" issued under Section 2 of the Price Control Act.[16] However, questions concerning agency determinations as to the applicability of the basic regulations, the validity of interpretations, announcements of general policy and other similar kinds of agency action fall within the jurisdiction of the District Courts and outside the grant of jurisdiction to the Emergency Court of Appeals. See, e.g., *Bowles* v. *Simon*, 145 F 2d 334 (C.A. 7, 1944); *Gordon* v. *Bowles*, 153 F 2d 614 (E.C.A., 1946). The soundness of this interpretation of Congressional intent is demonstrated by Section 2 (m),

[16] See e.g., **Yakus v. United States**, 321 U.S. 414 (1944).

in which Congress recognized that agency action which a claimant challenged as unauthorized by lawfully issued regulations relating to the subsidy program was not to be considered or characterized as a "regulation or order" so as to fall within the exclusive jurisdiction of the Emergency Court of Appeals.

2. The Announcement and letter amounted to nothing more than an agency statement interpreting powers which respondent thought had been conferred on it by the basic statutes, directives, and its Regulation No. 10. The documents are neither regulations nor orders. Neither is cast in the familiar terms or form of a regulation, order, or amendment thereto. Indeed the "Announcement" states that it is an Announcement "under Regulation No. 10." Neither was published in or filed with the Federal Register, contrary to respondent's invariable administrative practice. This omission is of significance for the further reason that Section 3 of the Administrative Procedure Act (5 U.S.C. 1001) requires the publication of all substantive rules and regulations. The failure of respondent to publish Announcement No. 1 or the letter in the Federal Register reflects a clear administrative intent that the Announcement and the implementing letter were not intended to be and were not in fact regulations or orders.

Furthermore, Regulation No. 10 specifically provides for the issuance of such an interpretation in the form of an "announcement." Section 7003.1 of Regulation No. 10 provides:

> "*Upon announcement of any* * * * *interpretation* issued hereunder any applicant may within thirty days apply to RFC for the right to modify or revise any claims theretofore filed which are affected by such decision or interpretation which accrued within a period of 90 days immediately preceding the first of

the month following the decision of the day when the decision or interpretation was announced." (Emphasis supplied.)

3. Congress, in enacting Section 204(d) of the Price Control Act, vested exclusive jurisdiction in the Emergency Court of Appeals only over the validity of "regulations or orders." This legislative intent may not be judicially expanded to embrace all agency action of any kind whatsoever purporting to be issued under authority of a "regulation or order" by dubbing such action as "in effect" a "regulation or order," and claiming that jurisdiction to review such action has been withdrawn from the federal district courts. So construed, it would be difficult to conceive of any agency action which would not be "in effect" a "regulation or order." Clearly, however, Congress never intended such consequences to attach to Section 204 (d) of the Price Control Act.

4. The authorities relied on by the Court of Appeals for its holding that the "Announcement" was a regulation or order, with possibly one exception, concerned either a direct attack on the validity of a basic and underlying regulation,[17] or an attack on a specific order of respondent denying a specific claim or claims of the subsidy applicant.[18]

The single exception is *Schluderberg-Kurdle Co.* v. *R.F.C.*, 169 F 2d 419 (E.C.A., 1948), discussed on its merits, this Pet., p. 32, *infra.* That case was not, however, a judicially contested determination on the issue of jurisdiction, in that complainant affirmatively invoked the jurisdiction of the Emergency Court by specifically alleging that Announcement No. 1 was a "regulation or

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[17] **Tambasco v. R.F.C.**, 178 F 2d 283 (C.A. 2, 1949).

[18] **Merchant's Packing Co. v. R.F.C.**, 176 F 2d 908 (E.C.A., 1949); **Duncan Coffee Co. v. R.F.C.**, 178 F 2d 926 (E.C.A., 1949).

order" issued under Section 2 of the Price Control Act, and respondent R.F.C. did not challenge this assertion of jurisdiction. Each side thus conceded that the Emergency Court of Appeals had jurisdiction over the action. And, the Emergency Court of Appeals specifically stated in its opinion that "our jurisdiction is not challenged." Notwithstanding this circumstance, for the reasons we have stated (which were, of course, neither argued to nor considered by the Emergency Court), the Emergency Court improperly assumed jurisdiction in the *Schluderberg-Kurdle* case since the "Announcement" was neither a regulation nor an order issued under Section 2 of the Price Control Act, but was an interpretation or announcement of agency policy issued under Section 7003.11 of respondent's regulation concerning the validity of which the Emergency Court had no jurisdiction.

IV.

The District Court Properly Held That The Course of Action Undertaken By Respondent On March 31, 1947 Was Without Authority In Any Act Or Lawful Regulation Presently Or Formerly In Existence Pursuant To Which The Subsidies In Question Were Payable, And Is In Violation Of The Express Provisions Of Section 2 (m) Of The Price Control Act.

Although the Court of Appeals did not reach the merits of petitioner's claim that the respondent's recapture program formalized in Announcement No. 1 was not authorized by the Act, or the lawful regulations issued thereunder, a brief recitation of the reasons causing the District Court to find the Announcement unlawful is pertinent, particularly since the merits of petitioner's claim have a direct if not decisive bearing on the jurisdictional aspects of the case at bar.

Respondent's consistent position has been that the recapture program embodied in its Announcement No. 1

merely expressed what had always been an "inherent" condition that no subsidies would be paid or honored on slaughter operations which resulted in inventory which was sold at uncontrolled prices. The decisive arguments requiring the rejection of this wholly untenable position may be summarized as follows:

1. The subsidy involved was a livestock production subsidy, not a meat subsidy; for the reasons heretofore set forth in this Petition. (Pet., pp. 7 to 10 and p. 23, *supra*).

2. All grounds which will cause the invalidation of subsidy claims are required to be set forth in the livestock slaughter subsidy regulations. Claims may not be invalidated for alleged "inherent" but "unexpressed" conditions. *Consolidated Flour Milling Co.* v. *R.F.C.*, 177 F 2d 209 (E.C.A., 1949); *Gibbs* v. *R. F. C.*, 169 F 2d 654 (E.C.A., 1948); *Belle City Packing Co.* v. *R.F.C.*, 169 F 2d 413 (E.C.A., 1948)

3. The controlling directives and respondent's own Livestock Slaughter Payments Regulations Nos. 3 and 10 contained and recited in detail all grounds by which subsidy claims might be invalidated or recaptured. The condition of payment recited in "Announcement No. 1" has never been set forth in any directive or regulation.

4. Both Regulations Nos. 3 and 10 expressly stated that subsidies would be paid on all livestock slaughtered up to the date of termination of the Regulation, by providing that:

> "* * * Such termination shall not preclude the filing of claims on account of livestock slaughtered on or before the date of termination * * *."

5. In every instance prior to the issuance of Announcement No. 1, subsidies were initiated on all livestock

slaughtered on or after a certain date, and when subsidies were discontinued, claims were paid for all livestock slaughtered up to and including the termination date without regard to the sale and disposition of the inventory on hand.

6. Faced with precisely the same situation as is presented by the case at bar, respondent, on the termination of controls on June 30, 1946, honored all subsidy claims for all livestock slaughtered up to and including June 30, 1946, without regard to the fact that the inventory was then sold at uncontrolled prices.

7. Not only did respondent honor all subsidy claims for livestock slaughtered up to and including June 30, 1946, but respondent specifically announced prior to that date that it would honor all such claims.

8. Respondent, on the reinstitution of the subsidy program effective September 1, 1946 paid subsidies for all livestock slaughtered on and after September 1, 1946. No claims were filed for nor were subsidies paid on the inventory on hand on that date, which inventory was derived from the slaughter of livestock purchased at inflationary prices during the period of decontrol from July 1, 1946—August 31, 1946.

9. Respondent honored petitioner's subsidy claims in an amount of $1,304,583.51 on livestock slaughtered from September 1, 1946 up to and including October 14, 1946, which in part resulted in inventory on hand on that date.

10. It was not until approximately six months after October 14, 1946 that respondent first stated its intention to recapture or invalidate subsidies on livestock slaughtered September 1, 1946-October 15, 1946, which resulted in inventory on hand, October 15, 1946.

11. Directive 41 of the Office of Economic Stabilization to which respondent must conform, was amended six times subsequent to October 15, 1946 and two times after the issuance of Announcement No. 1, but nothing contained in any such amendment ever authorized respondent to institute the program formalized in Announcement No. 1.

The decision of the Emergency Court of Appeals in *Schluderberg-Kurdle Co.* v. *R.F.C.*, 169 F 2d 419 (E.C.A., 1948), holding Announcement No. 1 to be valid, was decided by a Court without jurisdiction over the subject matter, and is clearly distinguishable because: (a) the subsidy claimant not only conceded but actually argued that the subsidy was a consumer's meat subsidy, rather than a producer's subsidy; (b) the Emergency Court set forth this concession in its opinion and regarded it as being of decisive significance; (c) the basic, controlling and all important directives were not called to the attention of the Court; (d) the significant administrative interpretations of the program were not called to the attention of the Court; and (e) the termination provisions of the Regulation were not placed in their proper light.

The decision of the Emergency Court of Appeals in the *Schluderberg-Kurdle* case is furthermore directly contrary in principle to subsequent decisions of that Court. See e.g., *Gibbs* v. *R.F.C.*, 169 F 2d 654 (E.C.A., 1948); *Belle City Packing Co.* v. *R.F.C.*, 169 F. 2d 413 (E.C.A., 1948); and *Consolidated Flour Milling Co.*, v. *R.F.C.*, 177 F 2d 206 (E.C.A., 1949).

V.

The District Court Properly Held Announcement No. 1 And The Implementing Letter Of April 29, 1947 To Be Invalid In That They Retroactively Impaired Vested Rights Of Petitioner To Accrued Livestock Slaughter Subsidy Payments In Violation Of The Fifth Amendment To The Constitution Of The United States.

Petitioner contended before the Court of Appeals that the Announcement retroactively impaired accrued vested rights of petitioner. Although the Court of Appeals failed to pass on this point, it is sound in principle and authority.

It has been recognized both legislatively as well as judicially that livestock slaughter subsidies are "obligations," not "gratuities." Section 6(d), Price Control Extension Act of 1946; *Illinois Packing Co.* v. *Snyder,* 151 F 2d 337, 339 (E.C.A., 1945); *Armour & Co.* v. *R.F.C.,* 162 F. 2d 918 (E.C.A., 1947). Petitioner slaughtered livestock in compliance with all of the conditions and provisions of Livestock Slaughter Payments Regulation No. 10. It had thus fulfilled all of the qualifications and conditions imposed by Regulation No. 10 upon its termination on October 15, 1946. Respondent, by its Announcement No. 1, is now seeking retroactively to forfeit certain subsidy claims which petitioner had already become entitled to and earned prior to the promulgation of the Announcement. This is in contravention of the Fifth Amendment to the Constitution of the United States. Judicial authority has long recognized that such rights arising under subsidy statutes cannot be thus retroactively invalidated. See, *e.g., Steamship Co.* v. *Joliffe,* 2 Wall. (69 U. S.) 450, 457-8; *Ettor* v. *Tacoma,* 228 U. S. 148; *Coombes* v. *Getz,* 285 U. S. 434; *Salt Co.* v. *East Saginaw,* 13 U. S. 372; *Calder* v. *Henderson,* 54 Fed. 802, 804-5 (C.A. 5, 1893).

CONCLUSION.

For the reasons stated it is respectfully submitted that the general importance of the issues decided by the Court of Appeals in the case at bar fully merits review by this Court. The petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

Edward R. Johnston,
Albert E. Jenner, Jr.,
Edward H. Hatton,
Attorneys for Petitioner

Of Counsel.

Edgar Byron Kixmiller,
William N. Strack,
Poppenhusen, Johnston, Thompson & Raymond,
Of Counsel.

APPENDIX.

I.

Section 2(m), added by the Stabilization Extension Act of June 30, 1944 (50 U.S.C. App. 902(m)) as an amendment to the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U.S.C. App. 901) reads as follows:

> "(m) No agency, department, officer, or employee of the Government, in the payment of sums authorized by this or other Acts of Congress relating to the production or sale of agricultural commodities, or in contracts for the purchase of any such commodities by the Government or any department or agency thereof, or in any allocation of materials or facilities, or in fixing quotas for the production or sale of any such commodities, shall impose any conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder, under which such sums are authorized, such contracts are made, materials and facilities allocated, or quotas for the production or sale of any such commodities are imposed. Any person aggrieved by any action of any agency, department, officer, or employee of the Government contrary to the provisions hereof, or by the failure to act of any such agency, department, officer, or employee, may petition the district court of the district in which he resides or has his place of business for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful; and the court shall have jurisdiction to grant appropriate relief. The provisions of the Judicial Code as to monetary amount involved necessary to give jurisdiction to a district court shall not be applicable in any such case."

Section 204(d) of the Price Control Act (50 U.S.C. App. 904(d)) reads as follows:

> "The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders

of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2 [section 902 of this Appendix], of any price schedule effective in accordance with the provisions of section 206 [section 926 of this Appendix], and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision."

II.

The Directive of October 25, 1943 (8 F. R. 14,641) reads as follows:

"§ 4004.1 Livestock slaughter payments. (a) The purposes of this section are to insure:

(1) That the livestock slaughter payments made with respect to cattle under Part 7003 of this title (Livestock Slaughter Payments) inure to the benefit of cattle producers;

(2) That such payments are made only to the extent necessary to maintain live cattle prices within a range consistent with the purposes of the stabilization and production programs;

(3) That such prices do not impose undue hardship upon any group of slaughterers whose output is needed to obtain the maximum necessary production; and

(4) That the available supplies of live cattle are equitably distributed among slaughterers and feeders.

(b) It is hereby determined that the stabilization and production programs require the maintenance of live cattle prices within the following ranges:

Grade:	Price (per cwt., at Chicago)
Choice	$15.00 to $16.00
Good	14.25 to 15.25
Medium	12.00 to 13.00
Common	10.00 to 11.00
Cutter and canner	7.45 to 8.45

The Price Administrator and the War Food Administrator are directed to determine and publish, and to certify to Defense Supplies Corporation, live cattle prices at points other than Chicago which are in line with the foregoing Chicago prices.

(c) There shall be deducted from the livestock slaughter payments hereafter made to any slaughterer under Part 7003 of this title the net amount, if any, by which the total of the prices paid by such slaughterer for all live cattle purchased during the month for which the payments are made either fell short of the total amount he would have paid at the lower of the applicable prices, or exceeded the total amount he would have paid at the higher of the applicable prices, set forth or provided for in paragraph (b) of this section.

The grade of live animals purchased by a slaughterer shall be determined on the basis of the carcass grade. The Price Administrator and the War Food Administrator are directed to determine and publish, and to certify to Defense Supplies Corporation, conversion factors for determining the dressed weight equivalents of live weights.

In the case of slaughterers who operate more than one plant, the amount of the payments and deductions to be made shall be determined separately for each plant.

(d) The livestock slaughter payments hereafter made with respect to cattle under Part 7003 of this

title to any slaughterer whose beef carcasses are graded by an official grader of the Food Distribution Administration shall be revised and computed on a grade basis as follows:

Grade:	Payments per live cwt.
Choice	$1.00
Good	1.45
Medium	.90
Common	.50
Cutter and Canner	.50
Bologna Bull	.50

Livestock slaughter payments made to slaughterers whose beef carcasses are not graded by an official grader of the Food Distribution Administration shall remain unchanged.

(e) Slaughterers who during the year 1942, or a representative portion thereof, sold and who currently sell 98% or more of the total dressed carcass weight of cattle slaughtered by them in the form of carcasses, wholesale cuts, frozen boneless beef (Army specifications) (carcass equivalent) or ground beef, shall be paid in addition to the payments authorized by Part 7003 of this title, the amount of $0.80 per cwt. of cattle slaughtered during the month for which such payments are made.

(f) Defense Supplies Corporation is directed to amend Part 7003 of this title in accordance with this section.

(g) The War Food Administrator is directed as soon as practicable to institute a system of allocation of live cattle to slaughterers and feeders which is adequate to maintain an equitable distribution of available supplies.

(h) The Secretary of Commerce is directed to determine on the basis of facts certified by the War Food Administration and the Office of Price Administration whether the effectuation of the expressed purposes of this directive require adjustments in, or additions to, the payments contemplated by this directive because of inequities resulting from differences in transportation costs.

(i) This directive shall become effective immediately, except that paragraphs (c) and (d) shall become effective on December 1, 1943, and payments under paragraph (e) shall be made with respect to cattle slaughtered on and after November 1, 1943."

III.

"Livestock Slaughter Payments Regulation No. 10, Reconstruction Finance Corporation" (R. 6) reads as follows:

"Section 7010.1. Reconstruction Finance Corporation shall make payments to eligible slaughterers on cattle, calves, hogs and pigs slaughtered on and after September 1, 1946, in accordance with all the terms and conditions of Livestock Slaughter Payments, Revised Regulation No. 3 of Reconstruction Finance Corporation, as amended by Amendments Nos. 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18.

Section 7010.2. Revised Regulation No. 3 Reconstruction Finance Corporation and Amendments Nos. 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 thereto are made a part of this regulation.

Section 7010.3. This regulation shall terminate automatically, without regard to the ten day notice provision of Section 7003.12 of Revised Regulation No. 3, on the failure of any condition required by law as a prerequisite to validity of a subsidy on livestock or meat.

This regulation shall become effective September 1, 1946. Issued this 28th day of August, 1946.

Stuart K. Barnes,
Executive Director, Office of Defense Supplies."

IV.

"Announcement No. 1 Under Regulation No. 10 of Reconstruction Finance Corporation" (R. 32-33) reads as follows:

> "The volume of meat held in inventories by slaughterers at the close of business on October 14, 1946 (the date of termination of price controls on meat) was substantial, and such inventories were, of course, sold thereafter at uncontrolled prices. The Office of Temporary Controls has determined that in view of the provisions of Section 6(a)(4) of the Price Control Extension Act of 1946 and in order to avoid unjust enrichment of packers at the expense of the Government, subsidies allocable to these inventories should be recaptured. Operation of the plan is as follows:
>
> I. De Minimis Cases. Because of the disportionate administrative burden in relation to the potential amounts involved the Government will not attempt to recapture such subsidies in the case of slaughterers who furnish information to the RFC showing that they did not slaughter in excess of 500,000 pounds total live weight of cattle, calves and hogs, combined during the period consisting of the May, June and September 1946 accounting periods. A form for the use of slaughterers falling in this class is attached hereto (RFC Form No. DSC 117). Such slaughterers must complete and file this form with RFC before April 30, 1947, unless they elect to have invalidated their September and October 1946 meat subsidy claims whether paid or unpaid. On receipt of the completed form showing slaughter of not more than a total of 500,000 pounds live weight of cattle, calves and hogs combined during the period consisting of the May, June and September 1946 accounting periods, RFC will pay any amounts otherwise due on the September and October 1946 claims.

II. Large Slaughterers. With respect to slaughterers who slaughtered in excess of 500,000 pounds during the May-June-September period the amount to be recaptured will be based on the amount of meat held in inventory at the close of business October 14, 1946, unless they elect to settle instead by foregoing their total subsidies for September and October 1946. A form to be used by such slaughterers in reporting their inventories or for the purpose of making this election will be furnished as soon as copies are available. Until the form is available, no further September and October subsidy payments can be made to any slaughterers in this category unless he had no inventory of meat or meat products at the close of business October 14, 1946.

With respect to all slaughterers, large or small, who have already received the September-October subsidy, if their cases are not settled pursuant to the procedures provided herein, they will be referred to the Department of Justice.

Issued this 31st day of March, 1947.

Stuart K. Barnes,
Executive Director, Office of
Defense Supplies."

V.

Opinion of the United States District Court for New Jersey in *Riverview Packing Co., et al.* v. *Reconstruction Finance Corporation,* Civ. Action No. 9775, July 28, 1950, reads, in pertinent part, as follows:

"MEANEY, District Judge.

This is an action for a judgment declaring that respondent is unjustly, arbitrarily and illegally withholding certain subsidy payments allegedly due petitioners as slaughterers of bovine animals under the regulations of respondent and its predecessor, the Defense Supplies Corporation. Jurisdiction is allegedly conferred upon this court by the Stabili-

zation Extension Act of 1944, section 102, subsection (m) 50 U.S.C.A. App. 902 (m).

Respondent answers denying that it arbitrarily withheld payment on subsidy claims of petitioners, alleging that petitioners had failed to comply with existing regulations and counterclaims as against Riverview Packing Co., Inc. for reimbursement of moneys paid on claims allegedly later invalidated. Respondent also denies the jurisdiction of the court to grant the relief sought.

The matter was referred to a master who furnished the court with two reports one as to Penn Abattoir Co., and K. & J. Markets, Inc., the other as to Riverview Packing Co., Inc. On motions to confirm the master's reports respondent filed objections and decision was reserved.

The question of jurisdiction has previously been disposed of on motion to strike the petition. However, it may be desirable to set forth the views of the court at this time.

Section 2(m) of the Stabilization Extension Act of 1944, 50 U.S.C.A. App. Par. 902(m), amending the Emergency Price Control Act of 1942, provides as follows:

> 'No agency, department, officer, or employee of the Government, in the payment of sums authorized by this or other Acts of Congress *relating to the production or sale of agricultural commodities,* * * * shall impose any conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder, under which such sums are authorized * * *. Any person aggrieved by any action of any agency, department, officer, or employee of the Government contrary to the provisions hereof, or by the failure to act of any such agency, department, officer, or employee, may petition the district court of the district in which he resides or has his place of business

> for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful; and the court shall have jurisdiction to grant appropriate relief. * * *' (Emphasis supplied)

On the face of this section when read alone, it would seem clear that this court has jurisdiction in the instant matter. However, section 204(d) of the Emergency Price Control Act, 50 U.S.C.A. App. Par. 924(d), had previously conferred exclusive jurisdiction 'to determine the validity of any regulation or order issued under Section 2', on the Emergency Court of Appeals and the Supreme Court upon review.

The withholding of a subsidy payment has been held to be an 'order' within the meaning of Section 204 of the Emergency Price Control Act even though not expressly so designated by the RFC. *Armour & Co.* v. *R.F.C.*, (Em. App. 1947) 162 F. 2d 918. This being so, exclusive jurisdiction would appear to be vested in the Emergency Court of Appeals under Section 204(d). These two statutory provisions must, however, be construed together, and since Section 2(m) was enacted after Section 204(d) it must have been intended to modify Section 204(d). Thus the district courts were granted jurisdiction in a limited group of cases previously exclusively within the cognizance of the Emergency Court of Appeals. This has been acknowledged by the Emergency Court of Appeals in the case of *Illinois Packing Co.* v. *Bowles*, (Em. App. 1945) 147 F. 2d 554, 560, where the court said:

> 'Subsection (m) does not purport to withdraw from the Emergency Court of Appeals any jurisdiction theretofore granted to it. It is conceivable, however, that the effect of the subsection, in a narrow class of cases, may be to give to the district courts a jurisdiction concurrent

with ours, and to that extent it may, inferentially, modify the provision of 204 (d) making our jurisdiction exclusive.'

The effect of Section 2(m) has been under judicial consideration several times resulting in decisions which seem to be somewhat in conflict. In *Blalack* v. *United States*, (6 Cir. 1946) 154 F. 2d 591, at page 596, the court said:

'* * * there was blanket jurisdiction in the District Court of all matters arising under the Stabilization Act, including challenges to the validity of regulations'

In *Illinois Packing Co.* v. *R.F.C.* (D.C.N.D. Ill. 1944) 57 F. Supp. 8, aff'd (7 Cir. 1946) 156 F. 2d 875, it was held that Section 2(m) does not give jurisdiction over an action seeking a declaratory judgment finding an amendment to a regulation of the Defense Supplies Corporation invalid. The Court said that Section 2(m) was intended only to cover actions where the agency made a determination which was incorrect in fact. A somewhat similar result was reached in *Samett* v. *R.F.C.* (10 Cir. 1947) 165 F. 2d 605, where it was said that section 2(m) conferred jurisdiction on the district courts only in cases of administrative action or failure to act under terms of a valid regulation. The Circuit Court of Appeals for the First Circuit has held in *Atlantic Meat Co.* v. *R.F.C.*, 166 F. 2d 51, that an action to recover meat subsidy payments may not be brought under Section 2(m) because meat is not an agricultural commodity. In contrast to this is the decision of the District Court for the Northern District of Illinois in *Swift & Co.* v. *R.F.C.*, 79 F. Supp. 546, holding that it had jurisdiction under Section 2(m) in an action to recover meat subsidy payments because the subsidy was one 'relating to the production or sale of agricultural commodities.'

However, whether or not meat is an agricultural commodity, does not seem to this court to be the

vital issue here as was decided in *Atlantic Meat Co.* v. *R.F.C., supra,* but it seems the inquiry should be directed to whether R.F.C. was an agency engaged in making payments relating to the production or sale of agricultural commodities'. The language used is broad; the statute does not require that the subsidy payment in question be for the production or sale of agricultural commodities, but only *related* to either the production or sale. Significant also on the question of jurisdiction is the fact that petitioners here are not attacking the validity of any regulations but assert that under the regulations they are entitled to payment.

Bearing in mind the decisions referred to above, this court concludes that it has jurisdiction in the instant case under Section 2(m). In reaching this conclusion the court agrees with the determination in *Swift & Co.* v. *R.F.C., supra,* that the subsidy program was intended to benefit the producer and to stabilize the price of cattle, hence the R.F.C. was 'an agency, department, officer or employee of the Government, in the payment of sums authorized by this or other Acts of Congress *relating to the production or sale of agricultural commodities'* within the meaning of Section 2(m). Thus the court under Section 2(m) has jurisdiction to determine whether 'any such action or failure to act is in conformity with the provisions hereof and otherwise lawful.'

In attacking the jurisdiction of the court the R.F.C. also alleges that petitioners have failed to exhaust their administrative remedies in that the protest procedure provided in Section 203(a), 50 U.S.C.A. App. Par. 923 (a), has not been used. Respondent argues that the protest procedure is a prerequisite to jurisdiction of the Emergency Court of Appeals, *Illinois Packing Co.* v. *Bowles.* (Em. App. 1947) *supra,* and if the district court has concurrent jurisdiction it should be subject to the same requirement. The argument has much force. The

statutory grant of jurisdiction to the Emergency Court of Appeals was limited to cases where the protest procedure had been followed, 50 U.S.C.A. App. Par. 924 (a). However, in Section 2(m) no such limitation is imposed on the jurisdiction of the district court. The court concludes, therefore, that the petitioners need not have filed a protest before seeking relief in this court."

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